

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ORIGINAL

-----X
EDMIN ALICEA,

Plaintiff,

-against-

13 CV 7073 (JGK)

THE CITY OF NEW YORK, POLICE OFFICER ALEJANDRO
RIVAS (TAX 925987), DETECTIVE RICHARD BABOOLAL
(TAX 924906), AND POLICE SERGEANT FREDY CRUZ (TAX
915528),

Defendants.
-----X

26 Court Street
Brooklyn, New York

August 19, 2014
10:17 a.m.

EXAMINATION BEFORE TRIAL of ALEJANDRO
RIVAS, a Defendant in the above-entitled action,
taken by the Plaintiff, held at the
above-mentioned time and place, pursuant to
Notice, taken before Julia C. Fernandez, a Notary
Public of the State of New York.

A P P E A R A N C E S

REIBMAN & WEINER

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BY: BRIAN J. FARRAR, ESQ.

RIVAS

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A Yes.

Q How long have you been a member of the conditions unit?

A I'd say approximately eight years, nine years.

Q Did you have any specific duties during that shift on March 27, 2012?

A I was assigned to be the apprehension car.

Q What is the apprehension car?

A If we had an operation, if it was an ongoing operation and I was assigned any particular individual, we were supposed to be responsible to follow that individual and apprehend them with a description of that individual.

Q Were you given a description of any individuals at the beginning of your shift that day?

A Not at the beginning of the day that day. It was at the time where I conducted an arrest that day.

Q I'm just asking if you had any specific duties during your shift that day?

1 RIVAS

2 A Yes, apprehension car.

3 Q What do you mean apprehension car?

4 A You were responsible whenever they're
5 giving you an individual, give you a description,
6 direction of flight --

7 Q Who gives you the description?

8 A The observation officer.

9 Q Who's the observation officer?

10 A That day it was Police Officer Baboolal,
11 B-A-B-O-O-L-A-L.

12 Q Were you working with Officer Baboolal
13 that day?

14 A He was the observing officer, I was with
15 another officer at the apprehension car. He was
16 not in the car with me.

17 Q Who was in your car that day?

18 A I believe it was Police Officer Arico.

19 Q Is he your partner?

20 A Not right now, he's in another unit
21 right now.

22 Q Was he your partner at that time?

23 A Yes.

24 Q Were both of you in an unmarked or
25 marked car?

1 RIVAS

2 A I believe it was a marked car.

3 Q It was just you and Officer Arico?

4 A I believe it was also Officer McGrath.

5 Q What's Officer McGrath's first name?

6 A Terence.

7 Q When you began your shift that day, what
8 did you do at the beginning of your shift that
9 day?

10 A We just got together in the office.

11 Q Who's we?

12 A The unit, my sergeant and the members of
13 the unit.

14 Q What did you do when you got together?

15 A We actually got together and decided
16 what type of operation we were gonna have that
17 day.

18 Q What type of operation did you decide
19 you were going to have that day?

20 MR. FARRAR: Objection.

21 A That was decided by the sergeant and he
22 decides who's gonna be in the apprehension car and
23 who's gonna be in the observation point.

24 Q Who was your sergeant that day?

25 A Sergeant Cruz.

RIVAS

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2 Q Did Sergeant Cruz decide that you were
3 going to be in a certain car with Officer Arico
4 and Officer McGrath?

5 A Yes.

6 Q What car were you in?

7 A I don't remember the number of the car.

8 Q You said it was the apprehension car?

9 A Yes.

10 Q Who was driving the car that day?

11 A I don't remember who was driving the car
12 that day.

13 Q Would it be in your memo book?

14 A No.

15 Q Were you driving the car that day?

16 A No.

17 Q Were you in uniform that day?

18 A Yes.

19 Q Were Officers McGrath and Arico in
20 uniform that day?

21 A Yes.

22 Q Were you in a marked or unmarked car?

23 A Marked.

24 Q Had you worked that assignment before?

25 A Yes.

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Q What were you told at the beginning of your shift that day?

A That I was gonna be in the apprehension car.

Q What did you understand that to mean?

A That I was gonna be responsible to do pickups. Pickups mean if it was somebody that needed to be apprehended, we would go and apprehend them.

Q How do you know if somebody has to be apprehended?

A It has to be radioed in by the observing officer which would give you the direction of flight and the description of the individual.

Q Who was the observing officer during your shift this day, on March 27, 2012?

A You asked me that question earlier, it's PO Baboolal.

Q Do you know where Sergeant Cruz was that day?

A I don't remember where he was.

Q Can you describe for me the geographical confines of the precinct that you're assigned to?

A We cover from 155 to 179, from the east

1 RIVAS

2 river to the west river.

3 Q Who was the operator of the vehicle that
4 day that you were in?

5 A I told you, I don't remember.

6 Q Is there usually somebody who is
7 assigned to be the vehicle operator?

8 A Yes, whoever's assigned, you know, given
9 the keys; but I don't remember who it was that
10 day.

11 Q Who usually assigns the person to be the
12 vehicle operator?

13 A Usually, when they give us the car,
14 anybody could be the operator.

15 Q Who gives you the car?

16 A The sergeant or the desk, whoever is
17 assigning, you know, assigns the car. Once they
18 assign the car they have to write it down.

19 Q Who usually assigns the car?

20 A The sergeant.

21 Q Who decides who's going to operate the
22 vehicle?

23 A Anybody could take it.

24 Q Do you decide amongst yourselves?

25 A Yes.

1 RIVAS

2 Q Does that decision or assignment get
3 recorded anywhere?

4 A Some do, some don't.

5 Q Are you required to record the vehicle
6 operator?

7 MR. FARRAR: Objection.

8 A I believe so.

9 Q Did you record who the vehicle operator
10 was on that day?

11 A No, I didn't.

12 Q Was there somebody in your vehicle who
13 was assigned to write down observations?

14 A Observation of what?

15 Q When you were on patrol that day, were
16 you required to make observations?

17 MR. FARRAR: Objection.

18 A I'm not the observing officer, I told
19 you it was Baboolal. I'm just the apprehension
20 but everybody is observing.

21 Q That's my point, so as a police officer
22 are you required to make observations even when
23 you're working apprehension?

24 A Yes.

25 Q Where do you record those observations?

1 RIVAS

2 A In my memo book. Explain this again,
3 what type of observations, everything that I see
4 throughout the day or an incident of an arrest?

5 Q For instance, whoever was driving the
6 vehicle, where would you have been required to
7 record that?

8 MR. FARRAR: Objection.

9 A The recorder of the RMP you're saying,
10 yes.

11 Q Where would you have been required to
12 record that?

13 A My memo book.

14 Q Is there a reason that you would not
15 have recorded that in your memo book?

16 A No reason.

17 Q You were in a vehicle with Officers
18 McGrath and Arico, correct?

19 A Yes.

20 Q Were any of them assigned to write down
21 their observations specifically?

22 MR. FARRAR: Objection.

23 A Everybody's responsible for their memo
24 book entries.

25 Q There's no assigned recorder in your

RIVAS

vehicle?

A No.

MS. MASSIMI: We're going to call for production at this time for the memo books of Officers Arico and McGrath.

(DOCUMENT REQUESTED)

MR. FARRAR: Put it in writing and we'll take it under advisement.

MS. MASSIMI: Sure.

Q Explain to me what was the first thing that you did once the three of you left the precinct in the marked NYPD vehicle that day?

A We positioned ourselves on the confines of the 33rd Precinct.

Q What do you mean position yourselves?

A Basically, far away from the observing point.

Q What's the observing point?

A At that time Officer Baboolal, I believe, was observing 172 between Audubon and St. Nicholas Avenue.

Q What time did your shift begin that day?

A 0930.

Q What time did you leave the precinct in

1 RIVAS

2 the vehicle that day?

3 A I'm not sure, I don't remember.

4 Q Would it be in your memo book?

5 A Maybe.

6 Q Where did you first go when you left the
7 precinct that day?

8 A Exactly where I positioned myself, I
9 couldn't be able to tell you but it was not close
10 to 172.

11 Q Is there a reason why it would not have
12 been close to 172?

13 A We usually don't park too close where
14 the observation point is at.

15 Q Why is that?

16 A Because then the dealer would notice
17 that we're watching them.

18 Q The observation officer, is he usually
19 in plainclothes?

20 A Yes.

21 Q Was Officer Baboolal in plainclothes
22 that day?

23 A I believe so, I'm not sure.

24 Q Do you know if he was operating a
25 vehicle?

1 RIVAS

2 A I'm not sure.

3 Q Do you know if he was working alone or
4 with someone?

5 A I'm not sure.

6 Q Was there a time that day when you
7 arrived at the location of 172nd Street between
8 Broadway and Fort Washington?

9 A Yes.

10 Q What type of vehicle brought you to that
11 location?

12 A I mentioned marked vehicle.

13 Q Who was driving the vehicle?

14 A I told you before, I don't know who was
15 driving the vehicle. I don't remember.

16 Q Would the same person have been driving
17 the entire shift?

18 A Yes.

19 Q Where were you sitting in the vehicle?

20 A I don't remember.

21 Q Was there anyone else in the vehicle at
22 that time?

23 A Yes, the officers that I mentioned.

24 Q At the time you arrived at 172nd Street
25 between Broadway and Fort Washington it was you,

1 RIVAS

2 Officer Arico, and Officer McGrath in the vehicle?

3 A Yes.

4 Q Were there any other NYPD vehicles
5 following you?

6 A No.

7 Q Was your vehicle following any other
8 NYPD vehicle towards that area?

9 A No.

10 Q Had you ever participated in other
11 arrests with Officer Arico and Officer McGrath
12 together before?

13 MR. FARRAR: Objection.

14 A Yes.

15 Q How many times?

16 A Many times.

17 Q Had you ever participated in arrests
18 with Officer Baboolal?

19 A Yes.

20 Q How many times?

21 A Dozens of arrests.

22 Q Have you ever made any arrests
23 previously where you were in the apprehension
24 vehicle and Officer Baboolal was the observer?

25 A Repeat that again, please.

1 RIVAS

2 Q Other than that March 27, 2012 incident
3 had you ever participated in any other arrests
4 where you were in the apprehension vehicle and
5 Officer Baboolal was the observer?

6 A Yes.

7 Q How many?

8 A Many times.

9 Q What brought your attention to the
10 vicinity of 172nd Street between Broadway and Fort
11 Washington?

12 A Officer Baboolal had given us the
13 description of a male Hispanic, heading towards
14 our direction going west on 172nd Street.

15 Q Where was your vehicle located when you
16 received that call from Officer Baboolal?

17 A I believe we were parked southbound
18 between 172, 173 and Broadway.

19 Q Where were you going immediately before
20 responding to that call?

21 A I was not going nowhere, I was
22 stationed. I don't remember that well but I was
23 parked between those streets.

24 Q What was the description that Officer
25 Baboolal gave to you?

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A I believe it was male Hispanic.

3

Q What did Officer Baboolal tell you he

4

had observed?

5

A Hand to hand transaction.

6

Q Can you explain to me specifically what

7

Officer Baboolal said?

8

A Not exactly what he said. Once he

9

observed the hand to hand he puts over the

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description of the individual and the direction of

11

flight. He doesn't explain to us over the radio

12

what he saw.

13

Q How did you receive this information

14

from Officer Baboolal?

15

A Point-to-point radio.

16

Q Did you record this information in your

17

memo book?

18

A No.

19

Q Is there any particular reason?

20

A You cannot stop and write that down

21

cause at that moment you're going to go and

22

conduct an apprehension and then once you locate

23

that individual you proceed to do the

24

apprehension. And then, yes, I record the

25

apprehension that day of that individual. I

1 RIVAS

2 recorded it in my memo book.

3 Q After receiving this point-to-point
4 radio contact from Officer Baboolal that you've
5 just described, how long did it take you to arrive
6 at the location?

7 A Seconds, minutes.

8 Q How many seconds?

9 A I'm not sure of the time frame, how long
10 it took.

11 Q Did you make contact with an individual
12 in that area once you arrived there?

13 A Yes.

14 Q Can you describe this individual?

15 A A little heavyset, I don't recall the
16 height but it was the same description given to us
17 by Officer Baboolal.

18 Q But you don't remember what it was?

19 MR. FARRAR: Objection.

20 A Not right now.

21 Q Before seeing that individual at that
22 location had you ever observed him before?

23 A That individual?

24 Q Yes.

25 A If I seen him before that day?

RIVAS

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2 Q Yes.

3 A No.

4 Q Had you seen him earlier in the day?

5 A No.

6 Q Had you ever heard about Edmin Alicea
7 before?

8 A I believe his name is Edwin.

9 Q It's Edmin Alicea.

10 A Edmin, no.

11 Q Were you the first person to observe him
12 when your vehicle arrived at that location?

13 MR. FARRAR: Objection.

14 A When I arrived to which location?

15 Q The location where you apprehended him.

16 A Yes, and I believe the other ones, of
17 course, saw him too but I don't know what they
18 recall. I know what I observed.

19 Q What did you observe?

20 A I observed him coming in the direction
21 that Officer Baboolal had stated that I was
22 walking towards. I proceeded to get out of the
23 vehicle, at that moment I was very close to him.

24 Want me to continue?

25 Q Go on.

1 RIVAS

2 A I proceeded to exit the RMP and the
3 other officers too got very close to him and as
4 I'm approaching him he notices that we were
5 coming. As I request for him to turn around to
6 see that we are the police, he proceeded to place
7 a plastic bag into his mouth.

8 Q Had you been parked before you received
9 that point-to-point radio contact?

10 A I was between 172 and 173.

11 Q On Broadway?

12 A Yes.

13 Q What route did your vehicle take from
14 that location to the location where you --

15 A We were already closer to 172 when he
16 arrives from St. Nicholas.

17 Q Can you explain that --

18 A As he was walking west towards 172 and
19 Broadway, we were already there (indicating)
20 facing south at 172 and Broadway, between 172 and
21 173.

22 Q He was walking west on 172?

23 A Yes.

24 Q What direction was your vehicle driving
25 when you arrived at the location?

1 RIVAS

2 A I was already there when he reached
3 Broadway and crossed the street.

4 Q What route did you take to arrive at
5 that location?

6 A Broadway.

7 Q Which direction?

8 A South, I was facing south.

9 Q You were parked facing south or you
10 drove --

11 A Facing south, yes. I was parked facing
12 south on Broadway, St. Nicholas, 172 (indicating).
13 If you walk from St. Nicholas, 172 towards 172 and
14 Broadway, you're going west (indicating). I'm
15 parked closer to 172, between 172 and 173 and
16 Broadway facing south.

17 MS. MASSIMI: Give me a moment.

18

19 (Whereupon, a brief recess was
20 taken.)

21

22 Q I'm going to show you a map so that you
23 can explain to me exactly where you were in
24 relation to the plaintiff and in relation to the
25 observation unit? (Handing document).

1 RIVAS

2 A Repeat that.

3 Q I'm going to show you a map so that you
4 can mark on here where you were?

5 MR. FARRAR: Do you want that marked for
6 Identification?

7 MS. MASSIMI: Yes. Can you mark this.

8
9 (Whereupon, the above-referred
10 to document was marked as
11 Plaintiff's Exhibit 1 for
12 Identification, as of this
13 date.)

14
15 Q Can you take a look at this and mark
16 with an A where you were on?

17 A Approximately, not exactly, right? What
18 I could remember is --

19 Q Mark with an A where you were when you
20 received the point-to-point radio contact?

21 A (Perusing document). That, I don't
22 remember. Could've been in the vicinity up here
23 (indicating) anywhere and then once I get a
24 description, then I get closer. Before I got to
25 the location I cannot remember where I was, we

1 RIVAS

2 were far away. Once you get a description, then
3 you move to where you need to be.

4 Q So you don't remember what you were
5 doing before you received the point-to-point
6 radio contact?

7 MR. FARRAR: Objection.

8 A Where was I at?

9 Q What were you doing before you received
10 the call?

11 A I was driving around far away from the
12 location.

13 Q What were you doing, what were your
14 duties?

15 A Nothing, just waiting for a description.

16 Q Once you received that point-to-point
17 radio contact, how did you arrive at the scene?

18 A I came down and kind of stopped between
19 these two blocks (indicating) 173 and 172 on
20 Broadway looking south.

21 Q Where were you when you first observed
22 Mr. Alicea?

23 A Right there (indicating).

24 Q Right where?

25 A Right where that point is at.

1 RIVAS

2 Q What did you do once you observed him?

3 A We knew each other, that was the
4 description of the other individual.

5 Q You what?

6 A We knew right away that was the
7 description that was given by Officer Baboolal.

8 Q How did you know that right away?

9 A The description of the clothing.

10 Q What was the clothing that he was
11 wearing?

12 A I have to refresh my (pause).

13 Q What was Mr. Alicea doing when you first
14 saw him?

15 A Walking, crossing over going towards
16 Fort Washington.

17 Q Did you park your vehicle at this location
18 that you've marked?

19 A Yes, around that area, I believe so; it
20 was around there we got out.

21 Q When you observed Mr. Alicea, did you
22 proceed to follow him with your vehicle or did you
23 park --

24 A No, on foot.

25 Q Where did you park your vehicle?

1 RIVAS

2 A Where you have the mark in there and
3 then he was coming west, he crossed the street, we
4 got out, and we apprehended him right there.

5 Q Where?

6 A (Indicating).

7 Q Did you observe any other NYPD vehicles
8 in the vicinity at that time?

9 A No.

10 Q Do you know if Officer Baboolal was in a
11 vehicle that day?

12 A No.

13 Q Did Mr. Alicea do anything that you
14 observed that gave rise to reasonable cause for
15 you to believe that he had committed a crime?

16 MR. FARRAR: Objection.

17 A He placed a small green object into his
18 mouth as soon as he knew we were right behind him,
19 we were very close to him. I kept on walking, as
20 I asked him to turn around so he would notice that
21 it was the police, he placed it in his mouth.

22 Q What did you say to him?

23 A Nothing, I just saw him place it in his
24 mouth. In my experience and the odor emanating
25 where he was at and the characteristics of the bag

1 RIVAS

2 that he put in his mouth, it was marijuana.

3 Q How much marijuana would you say it was?

4 A I don't know, I can't tell you that.

5 Q Did anyone say anything to Mr. Alicea?

6 A No.

7 Q Did you hear Officer Arico say anything
8 to Mr. Alicea?

9 A No.

10 Q Did you hear Officer McGrath say
11 anything to Mr. Alicea?

12 A No.

13 Q What side of the street was Mr. Alicea
14 on when you first observed him?

15 A The north, going west on the north side
16 of 172.

17 Q Who made the decision to stop the
18 vehicle at the location on Broadway between 172
19 and 173?

20 A Whoever was the operator, we just parked
21 there.

22 Q Who got out of the vehicle first?

23 A I don't remember.

24 Q Did you have any physical contact with
25 Mr. Alicea?

1 RIVAS

2 A We placed him under arrest, we told him
3 to put his hands behind his back.

4 Q Were you the only person that had
5 physical contact with Mr. Alicea at the scene of
6 the arrest?

7 A I believe the other officers too but I
8 don't remember who did what.

9 Q Who first had physical contact with Mr.
10 Alicea?

11 A Who saw him first?

12 Q You were with Officer McGrath and
13 Officer Arico?

14 A Yes.

15 Q Out of the three of you who first made
16 contact with Mr. Alicea?

17 A I believe it was me, I was the one who
18 observed it. I don't know what they observed but
19 I observed it and we placed him under arrest.

20 Q What was the first physical contact that
21 you had with Mr. Alicea?

22 A I told him to put his hands behind his
23 back and placed him under arrest, that was it.

24 Q Which part of your body first made
25 contact with Mr. Alicea?

1 RIVAS

2 A I don't remember.

3 Q Which part of his body did you first
4 make contact with?

5 A I don't remember.

6 Q Describe the physical contact that you
7 had with Mr. Alicea?

8 A Grab him, put his hands behind his back,
9 place him in cuffs.

10 Q What part of his body did you grab?

11 A I said I don't remember.

12 Q Did you observe Officer Arico or Officer
13 McGrath have any physical contact with Mr. Alicea?

14 A No, just assisting me in the arrest.

15 Q When did you learn that you were not
16 supposed to use choke holds?

17 MR. FARRAR: Objection.

18 A When did I learn that?

19 Q Yes.

20 A I believe my whole career.

21 Q Did you place Mr. Alicea in handcuffs?

22 A I don't remember.

23 Q Did you observe Officer McGrath place
24 Mr. Alicea in handcuffs?

25 A I don't remember.

1 RIVAS

2 Q Did you observe Officer Arico place Mr.
3 Alicea in handcuffs?

4 A I don't remember.

5 Q How was Mr. Alicea handcuffed?

6 A His hands behind his back.

7 Q Did you observe Mr. Alicea interacting
8 with anyone at the scene?

9 A No.

10 Q After you observed Mr. Alicea swallowing
11 what you said was marijuana, what did you do to
12 attempt to retrieve that item?

13 MR. FARRAR: Objection.

14 A I didn't do nothing.

15 Q Did you observe Mr. Alicea exchange
16 items with anyone at the scene of the arrest?

17 A No.

18 Q What had Officer Baboolal told you
19 during that radio notification a few minutes
20 earlier?

21 A The description of the individual and
22 the direction of flight.

23 Q What had he told you that he believed
24 this individual had done?

25 A He had observed him doing an exchange at

1 RIVAS

2 the location he observed him.

3 Q Did he describe the other individual who
4 he said was involved in this exchange?

5 A Not at that moment.

6 Q Did you ever receive a description of
7 this other individual who Mr. Baboolal said was
8 involved in this exchange?

9 A I don't know.

10 MR. FARRAR: Objection.

11 Q Did Mr. Baboolal indicate that he was
12 going to follow this second individual?

13 A No, I don't remember.

14 Q Who assigned you to be the arresting
15 officer for this arrest?

16 A Sergeant Cruz.

17 Q At what point were you assigned to be
18 the arresting officer?

19 A Back at the precinct.

20 Q Did you ever formulate an opinion in
21 your own mind that Mr. Alicea should be arrested?

22 MR. FARRAR: Objection.

23 A When he was apprehended; when he ate the
24 marijuana at the scene, that's when we decided to
25 put him in handcuffs.

1 RIVAS

2 Q What crimes or violations did you
3 believe Mr. Alicea had committed at that point?

4 A Tampering with evidence, trying to
5 destroy evidence.

6 Q What was your basis for believing that
7 he had committed that crime?

8 A As soon as he observed the officers come
9 towards him closer, he placed it in his mouth.

10 Q Which hand did he use to place it in his
11 mouth?

12 A I don't remember.

13 Q Did you conduct an investigation at the
14 scene of the incident?

15 MR. FARRAR: Objection.

16 A What type of investigation, no.

17 Q Do you know if anyone conducted an
18 investigation?

19 A No.

20 Q Did you ever attempt to find this other
21 individual involved in the alleged hand to hand
22 drug transaction?

23 A Yes, we try.

24 Q When did you attempt to find that
25 individual?

1 RIVAS

2 A I don't know how many minutes after
3 that, I don't remember. I don't remember what
4 time but, of course, we try to get that other
5 individual but I don't know what happened.

6 Q How did you try to get that other
7 individual?

8 A I guess another apprehension car. I'm
9 not sure, I can't tell you.

10 Q Who had received the description of this
11 other individual?

12 A I would not know, PO Baboolal would be
13 able to tell you.

14 Q Do you know if there's any video
15 surveillance around 172nd Street between Broadway
16 and Fort Washington?

17 A Not that I know of.

18 Q Did you ever see any video surveillance
19 of the arrest?

20 A No.

21 Q Were there any video cameras inside of
22 your car that day?

23 A No.

24 Q Do you know of any witnesses to the
25 arrest other than yourself, Mr. Alicea, Officers

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McGrath and Arico?

A No.

Q Did you ever speak to Mr. Alicea about
this incident?

A No.

Q Did you hear Mr. Alicea make any
statements to you at any time?

A No.

Q Do you know if Officer McGrath heard Mr.
Alicea make any statement?

A Not that I know of.

Q Do you know if Officer Arico heard Mr.
Alicea make any statement?

A Not that I know of.

Q Did Mr. Alicea resist your efforts to
arrest him?

A No.

Q Did you ever observe Mr. Alicea
complaining to anyone that the handcuffs were too
tight or causing him pain?

A Not to me.

Q Did you hear him complaining to anyone?

A No.

Q What about in the car?

1 RIVAS

2 A No.

3 Q At that precinct?

4 A No.

5 Q Did you observe Mr. Alicea's hands and
6 wrists at any time after you had handcuffed him?

7 A I don't remember but he was not
8 complaining.

9 Q After you handcuffed Mr. Alicea what was
10 your destination?

11 MR. FARRAR: Objection.

12 A The 33rd Precinct.

13 Q Did you make any stops along the way?

14 A No.

15 Q You headed straight from the scene of
16 the arrest to the 33rd Precinct?

17 A Yes.

18 Q Did you pick up anyone else on the way?

19 A No.

20 Q After you arrived at the precinct what
21 was the first thing you did?

22 A We placed him in the cells area.

23 Q How long after arriving at the precinct
24 did you place Mr. Alicea in the cell?

25 A A couple of minutes after we do the

RIVAS

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2 pedigree.

3 Q What's that?

4 A His name, address, belongings, whatever.

5 Q Do you take a picture of him at that

6 point?

7 A No.

8 Q When does his picture get taken?

9 A After the online is done, fingerprints.

10 Q So his picture is taken when you're

11 doing the fingerprints?

12 A Yes.

13 Q Who does that?

14 A Anybody could do it.

15 Q Did you recover any illegal substance or

16 item from Mr. Alicea during the course of this

17 arrest?

18 A No.

19 Q At any point did you recover anything

20 illegal from him?

21 A No.

22 Q Did you try to take Mr. Alicea to the

23 hospital at any point while he was in custody?

24 A No, he never complained to me that he

25 wanted to go to the hospital.

1 RIVAS

2 Q How did you plan to retrieve this
3 marijuana that you claim he swallowed?

4 A While I was doing the paperwork Sergeant
5 Cruz took care of that. Actually Sergeant Cruz,
6 my sergeant, made the decision but I was doing my
7 paperwork at that time.

8 Q What decision did Sergeant Cruz make?

9 MR. FARRAR: Objection.

10 A I don't know what was the conversation
11 he had or what he did.

12 Q What decision are you referring to when
13 you say Sergeant Cruz made the decision?

14 A The decision if the prisoner needs to go
15 to the hospital or not.

16 Q How do you know that he made that
17 decision?

18 A Because he was the sergeant in charge.

19 Q Did you hear him say anything that would
20 indicate to you that he made this decision or had
21 spoken to the arrestee about that?

22 A No.

23 Q Does the patrol guide say anything about
24 fastening the seat belt of arrestees after you
25 place them in your vehicle?

1 RIVAS

2 MR. FARRAR: Objection.

3 A I believe so.

4 Q What does it say about that?

5 MR. FARRAR: Objection.

6 A I believe that when you place them in
7 the car, you have to put the seat belt.

8 Q Was Mr. Alicea's seat belt fastened
9 inside the vehicle?

10 A I don't remember.

11 Q How fast did you drive from the scene of
12 the arrest to the precinct?

13 A At a normal speed.

14 Q How many turns did you make in driving
15 from the scene of the arrest to the precinct?

16 A I don't remember.

17 Q Did you make any sharp turns?

18 A No, not that I remember.

19 Q Did you make any stops on the way from
20 the scene of the arrest to the precinct?

21 A No.

22 Q Did you make any sudden stops?

23 A No.

24 Q Did you observe whether any part of Mr.

25 Alicea's body came into contact with any part of

RIVAS

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2 the interior of the vehicle while he was being
3 driven to the precinct?

4 A No.

5 Q Did you observe whether Mr. Alicea was
6 bleeding while he was in the vehicle?

7 A No.

8 Q Did you observe blood on Mr. Alicea's
9 clothes in the vehicle?

10 A No.

11 Q At any point while he was in custody did
12 you observe blood on Mr. Alicea's clothes?

13 A No.

14 Q Did you observe blood on Mr. Alicea at
15 any point while he was in custody?

16 A No.

17 Q Did you observe him bleeding at any
18 point while he was in custody?

19 A No.

20 Q Who removed Mr. Alicea from the vehicle
21 once you arrived at the precinct?

22 A I don't remember.

23 Q Do you remember how he was removed from
24 the vehicle?

25 A I don't remember.

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Q Did Mr. Alicea say anything to you once he was removed from the vehicle?

A No.

Q Was he taken directly from the vehicle into the precinct?

A Yes.

Q Did he say anything on that walk from the vehicle to the precinct?

A No.

Q Once he was in the precinct, before he was placed in the cell was Mr. Alicea made to sit down anywhere?

A No.

Q Was his physical and medical condition evaluated at the precinct?

A He was conscious, he was breathing, he was fine. We did the pedigree, he was standing up.

Q Were Mr. Alicea's handcuffs removed before he was placed in the cell?

A Once we bring him into the cells, we remove the handcuffs to proceed to take off the shoelaces and belt, if he has any.

Q How much time elapsed from the time the

1 RIVAS

2 handcuffs were first placed on Mr. Alicea until
3 when they were removed?

4 A I'd say no more than ten minutes, twelve
5 minutes max.

6 Q Did you observe Mr. Alicea in any
7 physical altercation with any other detainee while
8 he was in your custody?

9 A No.

10 Q Did you observe him get into a physical
11 altercation with any other officers?

12 A No.

13 Q How long after you arrived at the
14 precinct was Mr. Alicea's photograph taken?

15 A An hour after, an hour and a half after;
16 I'm not sure of the time frame.

17 MS. MASSIMI: Give me a moment.

18

19 (Whereupon, a brief recess was
20 taken.)

21

22 MS. MASSIMI: Can you read back the last
23 question and answer.

24

25 (Whereupon, the requested

1 RIVAS

2 testimony was read.)

3
4 Q When you say you observed Mr. Alicea
5 swallowing a plastic bag earlier, can you describe
6 the bag?

7 A It's like an inch by an inch size of a
8 plastic bag.

9 Q What color was it?

10 A Green, which I've been seeing for more
11 than fourteen years.

12 Q That bag was green?

13 A Yes, the bag was green.

14 Q Was it a Ziploc bag?

15 A Yes.

16 Q Were you working as part of an operation
17 that day, did it have a name, the operation?

18 A No, it didn't have a name.

19 Q What arrest paperwork did you fill out
20 as part of your job as the arresting officer for
21 this case?

22 A An online.

23 Q What's that?

24 A Which is the pedigree of the defendant;
25 his name, address, charge, and clothes description

1 RIVAS

2 and location of arrest.

3 Q What other paperwork did you complete?

4 A Any vouchers, we do a voucher. Voucher
5 is a number assigned by the New York City Police
6 Department to an item or evidence.

7 Q Is that all the paperwork you completed?

8 A Yes.

9 Q Which other officers were present while
10 you were doing this paperwork?

11 A Not that I remember.

12 Q What do you mean?

13 A Nobody that I remember.

14 Q Did anyone advise or suggest to you what
15 you should put in those forms?

16 A No.

17 Q Did you consult with any of the other
18 officers who were present about what should be
19 written in the online booking sheet?

20 A No.

21 Q Did you consult anyone from NYPD legal
22 about what to write?

23 A No.

24 Q You filled out these forms without input
25 from anyone else?

1 RIVAS

2 MR. FARRAR: Objection.

3 A Once I do the online, my supervisor
4 verifies the arrest.

5 Q That would be Sergeant Cruz?

6 A Yes.

7 Q What does it mean to verify an arrest?

8 A That he authorized everything on the
9 online, on the pedigree.

10 Q Did he authorize everything on the
11 online?

12 A Yes.

13 Q Did you speak to anyone from the
14 district attorney's office about this arrest?

15 A The ADA in charge, the district attorney
16 in charge.

17 Q What was the ADA's name?

18 A I don't remember the name.

19 Q Was it a man or a woman?

20 A I don't remember.

21 Q When did you first speak to him or her?

22 A I believe it was that night over the
23 phone.

24 Q What did you explain to him or her?

25 A I discussed the case, the arrest.

RIVAS

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2 Q Did you ever testify about the incident
3 in any sort of criminal court proceeding?

4 A On this case?

5 Q Yes.

6 A No.

7 Q In any administrative or disciplinary
8 proceedings related to this case?

9 A No.

10 Q Did you ever testify about this incident
11 at the CCRB or anywhere else?

12 A This case?

13 Q Yes.

14 A No.

15 Q What about the internal affairs bureau?

16 A No.

17 Q Once Mr. Alicea was placed in his cell,
18 how long was he in the cell before he was removed
19 the first time?

20 A Removed from what, the transport or for
21 the pictures?

22 Q How many times was he removed from his
23 cell in total?

24 A I believe once for the fingerprint and a
25 picture, which I stated earlier, hour, hour and a

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half; I'm not sure about the time frame.

Q How long did it take to do the photograph and the fingerprinting?

A It takes a half hour or less.

Q Once that was completed was he returned to his cell?

A Yes.

Q When he was removed from his cell to do the photograph and the fingerprinting, were the handcuffs placed on him?

A No.

Q Did you remove him from his cell the first time?

A I don't remember.

Q When he was placed back in the cell, how long was he in the cell until he was removed the next time?

A I cannot tell you, I don't remember.

Q What was the reason that he was removed the next time?

A For the transport. I believe he went down to the courts so I don't know what time was that.

Q Were you still on duty at that time?

1 RIVAS

2 A I'm not sure. I don't remember if I was
3 still there when they took him.

4 Q Do you recognize this? (Handing
5 document).

6 A (Perusing document). Yes, it's my memo
7 book.

8 MS. MASSIMI: Can you mark this as
9 Plaintiff's Exhibit 2.

10
11 (Whereupon, the above-referred
12 to document was marked as
13 Plaintiff's Exhibit 2 for
14 Identification, as of this
15 date.)

16
17 Q Can you take a look at this. (Handing
18 document). Is this your memo book from March 27,
19 2012?

20 A (Perusing document). Yes.

21 Q I need you to read your entire memo book
22 to me?

23 A 33rd Precinct; 0930 by 1805; 0930
24 present for duty; post, conditions; PO Arico, PO
25 McGrath.

1 RIVAS

2 Q Post, conditions, what does that mean?

3 A That's your post, that's your assignment
4 for the day.

5 Q What does that notation indicate?

6 A Post?

7 Q Yes.

8 A That you're the condition on that day,
9 that's your assignment for the day.

10 Q Go on.

11 A PO Arico, PO McGrath and then it says PO
12 Regan.

13 Q Who's PO Regan?

14 A That's another officer in my unit too.

15 Q Why did you write his name down in your
16 memo book?

17 A He could've been in the van.

18 Q What van?

19 A No, let me rephrase that. He could've
20 been in the car or at the time that we started
21 going out. The way it is is that officers go in
22 and out. I just placed down the names that were
23 with me at the beginning of the tour -- not the
24 tour, the beginning of the time that I go out.
25 So, yes, I put down his name too.

1 RIVAS

2 Q It was your understanding that at the
3 beginning of the tour you were going to be sharing
4 the car with PO Arico, McGrath, and Regan?

5 A Yes.

6 MS. MASSIMI: We're going to call for
7 production of PO Regan's memo book. I'll put
8 it in writing with the others.

9 (DOCUMENT REQUESTED)

10 MR. FARRAR: Okay.

11 Q You can go on.

12 A It says, negative result, narcotic
13 search. We do that, make sure the car is clean
14 before we go out. At 1335, one under. One under,
15 Alicea, Edwin; male Hispanic; charge CPM,
16 tampering. 1400 confirm ID. That's the time that
17 Officer Baboolal confirmed the ID, actually
18 confirmed that that was the individual that he put
19 over the radio. Put down, 1430 online processing.
20 1515 fingerprint.

21 Q Does that mean that you would have been
22 the person that fingerprinted him?

23 A Yes.

24 Q And photographed him?

25 A Yes. 1845 vouchers and then I finished

1 RIVAS

2 that day, it says here 0005.

3 Q What would have been the process for
4 Officer Baboolal to confirm the ID?

5 A He would come into the precinct which in
6 this case came in at 1400, looks at the
7 individual, goes to me, yes. It's confirmed,
8 that's the individual I called over. That's
9 confirmation.

10 Q Is that a complete and accurate account
11 of what you did that day?

12 MR. FARRAR: Objection.

13 A There are many things, do many things;
14 it's just briefly --

15 Q What do you mean many things?

16 A Put him under arrest, the computer,
17 fingerprint. I put down fingerprint but also took
18 pictures, to briefly explain.

19 Q But you don't have in your memo book
20 that you took his picture?

21 A No, it's not there but it's part of the
22 fingerprint processing.

23 Q Again, your memo book you just read to
24 us, is that a complete and accurate account of
25 what you did during your shift that day?

1 RIVAS

2 MR. FARRAR: Objection.

3 A Yes.

4 Q The description that you gave me before
5 of the events that occurred from when you received
6 the point-to-point radio contact with Officer
7 Baboolal until when you apprehended or detained
8 Mr. Alicea, was that a complete and accurate
9 account of the events that transpired during that
10 time frame?

11 MR. FARRAR: Objection.

12 A That's an account that I go over with
13 the district attorney, you know, the account of
14 what happened that day.

15 Q What do you mean that's the account you
16 went over with the district attorney?

17 A Can you repeat the question again.

18 Q The details that you described earlier
19 about what happened between when you received the
20 point-to-point radio contact from Officer Baboolal
21 up until when you detained Mr. Alicea, is that a
22 complete and accurate account of your
23 understanding of everything that transpired in
24 that time frame?

25 MR. FARRAR: Objection.

1 RIVAS

2 A Yes.

3 Q Is that the same account that you gave
4 to the district attorney?

5 A Of course.

6 Q Have you given me a complete list of the
7 documents that you're required to complete with
8 regard to arrests that you make?

9 A I believe so. I gave everything to the
10 district attorney.

11 Q When you approached Mr. Alicea at 172nd
12 after receiving that point-to-point radio contact
13 with Officer Baboolal, what would have been the
14 procedures that you could have used to retrieve
15 the marijuana that you claimed he swallowed?

16 MR. FARRAR: Objection.

17 A You asked me that question earlier and I
18 told you that I called Sergeant Cruz and he told
19 me to bring it into the precinct and I bring it
20 into the precinct and then the procedures was
21 taken over by Sergeant Cruz.

22 Q Is there anything else you could have
23 done at the scene to recover those drugs?

24 A No.

25 Q So notifying Sergeant Cruz, that's a

1 RIVAS

2 complete description of what you could have done
3 to obtain those drugs that you claim Mr. Alicea
4 swallowed?

5 MR. FARRAR: Objection.

6 A Yes.

7 Q Do you recognize this document?
8 (Handing document).

9 A (Perusing document). Yes.

10 MS. MASSIMI: Can you mark this.

11

12 (Whereupon, the above-referred
13 to document was marked as
14 Plaintiff's Exhibit 3 for
15 Identification, as of this
16 date.)

17

18 Q Can you read this criminal complaint?
19 (Handing document).

20 A (Perusing document). Yes.

21 Q This is the criminal complaint that you
22 completed related to this arrest, correct?

23 A Yes.

24 Q Is this a complete and accurate account
25 of the criminal activity that you believe

1 RIVAS

2 Mr. Alicea committed on that day?

3 A Yes.

4 Q Did you complete any other paperwork
5 with regard to this arrest?

6 A No.

7 Q Are you familiar with a form called the
8 Arrest Data Display?

9 A No. I did the online which it pretty
10 much might be what it is. The online and
11 vouchers.

12 Q What did you voucher from Mr. Alicea?

13 A I have to refresh my mind on the voucher
14 on that.

15 Q You didn't retrieve anything illegal
16 from him, correct?

17 A No.

18 Q Do you know if any other officers
19 completed any other paperwork with regard to this
20 arrest?

21 A No.

22 Q Do you know what happened to the
23 prosecution of Mr. Alicea regarding this incident?

24 A Can you repeat that again.

25 Q Do you know what happened to the

RIVAS

1
2 prosecution of Mr. Alicea regarding this incident?

3 A Not until recently. You're saying if I
4 knew what happened; if they sent me a letter or
5 somebody called me, what happened that day with
6 him?

7 Q Did you receive any letters in the mail
8 about this incident?

9 A About the lawsuit, yes, but not the
10 incident, what happened.

11 Q Do you know what happened to
12 Mr. Alicea's criminal charges?

13 A No.

14 Q Would you be surprised to know that his
15 charges --

16 A It was dismissed.

17 Q How do you know that they were
18 dismissed?

19 A When I spoke to the lawyers.

20 Q Which lawyers?

21 A The city lawyer.

22 Q That was the first time that you learned
23 that his charges were dismissed?

24 A Yes.

25 Q Do you know how many people you've

1 RIVAS

2 arrested in the course of your career where the
3 charges have been dismissed; I think you testified
4 earlier that you've made eight hundred arrests
5 during the course of your career?

6 A Not that many, yes.

7 Q Do you know how many of the charges have
8 been dismissed?

9 A No.

10 MS. MASSIMI: Give me one moment.

11
12 (Whereupon, a brief recess was
13 taken.)

14
15 Q This conditions unit that you were
16 assigned to that day, was that your normal
17 assignment?

18 A Yes. That's the name of the unit,
19 actually, that I'm part of.

20 Q It's part of the 33rd Precinct?

21 A Yes, it's called 33 Condition Unit.

22 Q How many people are part of that unit?

23 A It's on and off, some people leave.

24 Right now I think it's like eight of us, I'm not
25 sure.